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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/724,482	11/26/2003	Louis Dischler	5002A	1012

7590 06/25/2004

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EXAMINER
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EINSMANN, MARGARET V

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 06/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<p align="center"><b>Office Action Summary</b></p>	<b>Application No.</b> 10/724,482	<b>Applicant(s)</b> DISCHLER ET AL.	
	<b>Examiner</b> Margaret Einsmann	<b>Art Unit</b> 1751	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☐ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)<br>2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)<br>3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>5/21/04</u> | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____<br>5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)<br>6) <input type="checkbox"/> Other: ____ |
|---|--|

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1- 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otto, 4,512,065. Otto discloses a process of treating textile fibers by a sanding technique wherein the technique may be applied to coated fabric (col 6 line 40) and said treated fabric may be range dyed after the sanding treatment (example 9 in column 16). The process may be applied to synthetic and natural fabrics. Col 3 lines 12 et seq. describe the textile material as containing a body portion of which at least 20% are synthetic fibers such as polyester or nylon, and the remainder synthetic or natural fibers.

Example 13 in column 17 describes the process applied to a coated fabric. The sanding process removes a portion of the coating from the fabric. Accordingly the fabric is immobilized in a coating matrix, sanded, and the coating matrix is partially removed in the sanding process. There is no description of dyeing in that example. However the patent does teaches that the sanded fabrics may be range dyed. It would have been obvious to the skilled artisan to range dye the product of example 13 as disclosed in

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example 9 and then subsequently brush it as described in example 9 in order to arrive at a fabric having enhancement of beneficial effects in terms of softness, pleasantness, and luxuriousness of feel without any substantial strength loss as described in col 16 lines 33-45. Regarding the limitation of directionality measurement claimed in the product of applicant's claimed process, since Otto teaches all of the processing steps, the product of his process is assumed to have substantially equivalent properties absent evidence to the contrary. Regarding the brushing step disclosed in Otto, that step is not excluded from applicant's claimed process.

Claims 5-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Otto, 4,512,065 in view of Trotman, "Dyeing and Chemical Technology of Textile Fibers" Otto is relied upon as set forth above as teaching that fabric comprising at least 20% thermoplastic fibers, including polyester, may be coated, sanded and range dyed. They do not teach a particular method of range dyeing.

Trotman teaches that the Thermosol process is used extensively for continuous dyeing of materials made of polyester alone or when mixed with other fibers. Note that thermosol dyeing is a range dyeing process as shown in figure 23.12. See pages 490 and 491. It would have been obvious to the skilled artisan to dye the sanded polyester containing fabrics of Otto by a thermosol process since that is the conventional way to dye polyester fabrics.

**Dischler, 4,837,902** is particularly pertinent to the instant claims. At col 3 lines 15 et seq. Dischler states, "Resin finished fabrics made from low twist spun yarns may

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be particularly desirable to treat according to the present invention, especially if they are also characterized by open construction.

Another of the wide variety of conditioning effects that may be achievable by means of the process and apparatus of the present invention has been observed when range dyed fabrics are processed according to the invention." Since the process of this patent falls within the scope of the claimed "sanding, abrading and sueding as claimed, and resin treated fabrics are "immobilized in a coating matrix" this section of Dischler teaches the benefits of each of applicant's claimed process steps.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-8 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No 6,716, 775. Although the conflicting claims are not identical, they are not patentably distinct from each other because the product claimed in '755 is the result of the process of the instant

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claims. This application is a continuation of 09/569,951, from which the '775 patent issued. However the instant claims could have been presented in the 09/569,951 since the claimed process is fully disclosed therein. Whenever textiles are processed by the method herein claimed, the product claimed in '775 is produced.

Claims 1-4 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-19 of U.S. Patent No.6,211,381 in view of Otto. "381 claims the same process as claimed except for the range dyeing step. Otto teaches that coated, sanded fabrics may be range dyed. It would have accordingly been obvious to the skilled artisan to range dye the fabric produced by the process of the '381 patent.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret Einsmann whose telephone number is 571-272-1314. The examiner can normally be reached on 7:00 AM -4:30 PM M, Tu,Th and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Yogendra Gupta can be reached on 571-272-1316. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

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June 24, 2004

A handwritten signature in cursive script, reading "Margaret Einsmann".

Margaret Einsmann  
Primary Examiner  
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